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July 27, 2020

VIA ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

On behalf of our client, Ghislaine Maxwell, we respectfully request that the Court enter a protective order in the form attached hereto as Exhibit A.

The government has indicated that it requires the entry of a protective order before producing any discovery material to Ms. Maxwell. On July 9, 2020, the government provided defense counsel with an initial draft of a proposed protective order. Since that time, the parties have conferred several times on conference calls and by email, and have been able to reach agreement on almost all of the provisions of the proposed protective order.

Two key disputes remain, however, which require the Court's guidance. *First*, the defense believes that potential government witnesses and their counsel should be subject to the same restrictions as the defense concerning appropriate use of the discovery materials—namely, if these individuals are given access to discovery materials during trial preparation, they may not use those materials for any purpose other than preparing for trial in the criminal case, and may not post those materials on the Internet. *Second*, the defense believes it should not be restricted from publicly disclosing or disseminating the identity of any alleged victims or potential witnesses referenced in the discovery materials who have already identified themselves by speaking on the public record.

As set forth below, we believe that the proposed protective order contains appropriate restrictions that are no broader than necessary to protect the privacy interests of individuals

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referenced in the discovery and guard against prejudicial pretrial publicity, while still ensuring that Ms. Maxwell and defense counsel may adequately prepare and present a full defense at trial.

Legal Standard

Where the government seeks to curtail the use of pretrial discovery, Rule 16(d)(1) of the Federal Rules of Criminal Procedure requires that it “show good cause for the issuance of a protective order.” *United States v. Annabi*, No. 10 Cr. 7 (CM), 2010 WL 1253221, at *1 (S.D.N.Y. Mar. 24, 2010). To establish that good cause exists for proposed restrictions in a protective order, the government must show that disclosure will cause “a clearly defined and serious injury.” *United States v. Wecht*, 484 F.3d 194, 211 (3d Cir. 2007). A finding of harm “must be based on a particular factual demonstration of potential harm, not on conclusory statements.” *United States v. Gangi*, 1998 WL 226196, at *2 (S.D.N.Y. May 4, 1998) (citations and internal quotations omitted). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing.” *Wecht*, 484 F.3d at 211.

Courts must be careful not to impose a protective order that is “broader than is necessary” to accomplish its goals. *United States v. Lindh*, 198 F. Supp. 2d 739, 742 (E.D. Va. 2002) (citation and internal quotation marks omitted). Thus, courts are instructed to “weigh the impact” of requested protections and their extent against a defendant’s “due process right to prepare and present a full defense at trial.” *Id.*

Discussion

1. Restrictions on Use of Discovery Materials

The government and the defense agree that the protective order should include a restriction prohibiting Ms. Maxwell and defense counsel from (i) using discovery materials “for any civil proceeding or any purpose” other than defending or preparing for this criminal action; or (ii) posting discovery materials on the Internet. *See* Ex. A ¶¶ 1(a), 5. The defense’s proposed protective order would make those same restrictions applicable to potential government witnesses and their counsel so that they are on equal footing with the defense. *See* Ex. A ¶¶ 3, 5. The government has indicated that it cannot agree to such a restriction, despite acknowledging that it will very likely share discovery materials with those individuals during the course of trial preparation.

As the Court is aware, there is active ongoing civil litigation between Ms. Maxwell and many of the government’s potential witnesses. Moreover, numerous potential witnesses and their counsel have already made public statements about this case to the media since Ms. Maxwell’s arrest. There is a substantial concern that these individuals will seek to use discovery materials to support their civil cases and future public statements. It is therefore vital that the government’s potential witnesses and their counsel be subject to the same restrictions as Ms.

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Maxwell with respect to using the criminal discovery material solely for the purpose of this criminal case.

2. Victim/Witness Identities

Ms. Maxwell's proposed protective order prohibits Ms. Maxwell, defense counsel, and others on the defense team from disclosing or disseminating the identity of any alleged victim or potential witness referenced in the discovery materials, but does not prohibit defense counsel from publicly referencing individuals "who have spoken on the public record to the media or in public fora, or in litigation—criminal or otherwise—relating to Jeffrey Epstein or Ghislaine Maxwell." *Id.* ¶ 6. This language, which is nearly identical in all material respects to the language in the protective order approved in the government's criminal prosecution of Mr. Epstein, *see United States v. Epstein*, 19-CR-00490-RMB (S.D.N.Y. July 25, 2019), ensures appropriate privacy protections for alleged victims and should be approved here.

In contrast to the more permissive language it agreed to with respect to Mr. Epstein, the government has taken the position that Ms. Maxwell's defense counsel should only be allowed to disclose the identity of alleged victims or potential witnesses who have spoken by name on the public record "in this case." The government's proposal, however, advances no compelling privacy protections, and instead prevents the defense from making reference to individuals who have already voluntarily publicly disclosed their identities by, among other things, pursuing civil suits in their own name against Ms. Maxwell and/or Mr. Epstein; speaking by name in the public record in Mr. Epstein's criminal proceedings; participating in on-the-record media interviews; or posting comments under their own names on social media. The government's proposed restriction is therefore "broader than necessary" to protect the privacy interests of these individuals who have already chosen to self-identify, and will hinder the defense's ability to conduct further factual investigation, prepare witnesses for trial, and advocate on Ms. Maxwell's behalf.

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For the reasons set forth above, we respectfully submit that the Court should enter Ms. Maxwell's proposed protective order.

Respectfully submitted,

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cc: All counsel of record (via ECF)